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Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

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Committee against Torture

Communication No. 538/2013

Decision adopted by the Committee at its fifty-fourth session (20 April–15 May 2015)

Submitted by:	Khairullo Tursunov (represented by counsel, Mutabar Tadjibayeva, international human rights association Fiery Hearts Club)
Alleged victim:	The complainant
State party:	Kazakhstan
Date of complaint:	14 February 2013 (initial submission)
Date of present decision:	8 May 2015
Subject matter:	Extradition to Uzbekistan
Substantive issue:	Risk of torture upon return to the country of origin
Procedural issue:	None
Articles of the Convention:	Articles 3 and 22

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Annex

Decision of the Committee against Torture under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (fifty-fourth session)

concerning

Communication No. 538/2013*

Submitted by:	Khairullo Tursunov (represented by counsel, Mutabar Tadjibayeva, international human rights association Fiery Hearts Club)
Alleged victim:	The complainant
State party:	Kazakhstan
Date of complaint:	14 February 2013 (initial submission)

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 8 May 2015,

Having concluded its consideration of complaint No. 538/2013, submitted to it by Khairullo Tursunov under article 22 of the Convention,

Having taken into account all information made available to it by the complainant, his counsel and the State party,

Adopts the following:

Decision under article 22 (7) of the Convention

1.1 The complainant is Khairullo Tursunov, a citizen of Uzbekistan born in 1975. The complainant claims that his extradition to Uzbekistan would constitute a violation by Kazakhstan of article 3 of the Convention. He is represented by counsel, Mutabar Tadjibayeva, of the international human rights association Fiery Hearts Club.

1.2 Under rule 114 of its rules of procedure, the Committee requested the State party, on 28 February 2013, not to extradite the complainant to Uzbekistan while his communication was under consideration by the Committee. Nevertheless, the complainant was extradited to Uzbekistan on 13 March 2013.

The facts as presented by the complainant

2.1 The complainant is a citizen of Uzbekistan and a devout follower of Islam who has been practising his religion outside strict State control. After the explosion of six car bombs

* The following members of the Committee participated in the consideration of the present communication: Essadia Belmir, Alessio Bruni, Satyabhoosun Gupt Domah, Felice Gaer, Abdoulaye Gaye, Jens Modvig, Sapana Pradhan-Malla, George Tugushi and Kening Zhang.

in Tashkent on 16 February 1999, all Muslim men from the complainant's village were taken by the police officers of Beshkent and questioned about their religious affiliation. According to the complainant, the surveillance and questioning by the police lasted until 2004. On 7 April 2004, the officials of the National Security Service arrested the complainant, beat him and questioned him about his religious education. After one month, he was indicted for criminal conspiracy and association with Al-Qaida. On 20 October 2004, the Qashqadarinsky Regional Court of Uzbekistan sentenced him to 12 years in prison for religious extremism in conspiracy with 18 people whom he alleges that he did not know. On 2 February 2005, he was released under a general amnesty act. However, he continued to receive daily visits from a district police officer, which stopped after he complained to the National Security Service. In March 2005, the complainant was asked by the Beshkent Office of the Procurator to withdraw his complaint. The complainant refused and as a result the district police office started summoning him every month and questioning him about his activities and which mosque he attended. The summons continued until 2009. In August 2009, the complainant was approached by three prostitutes in front of the police. He was immediately arrested, accused of violating the honour of the women and, on the next day, sentenced to 10 days of deprivation of liberty. Until his release on 2 September 2009, officers of the National Security Service beat him and enquired about other followers of Islam. On 15 September 2009, the complainant fled Uzbekistan to escape constant harassment by the authorities. He went first to the Russian Federation, where a representative of the non-governmental organization (NGO) Memorial advised him to seek asylum with the Office of the United Nations High Commissioner for Refugees (UNHCR) in Kazakhstan. After the complainant left Uzbekistan, his wife was questioned about his whereabouts by the National Security Service and had to flee the country. In November 2009, she joined him in Almaty with their three underage children. In 2012, she was charged with illegal exit from Uzbekistan.

2.2 Upon arrival to Kazakhstan, on an unspecified date, the complainant applied for asylum with UNHCR and the Committee on Migration of Kazakhstan. The complainant does not provide information on the decision that UNHCR took on his application, contending that he cannot recall it. In October 2010, the Committee on Migration rejected his application. The complainant did not appeal, allegedly not being aware of such a possibility.

2.3 In a resolution of 24 February 2012 of the Office of the Procurator General of Uzbekistan, the complainant was indicted of committing crimes in Uzbekistan under six articles of the Criminal Code, including terrorism; incitement to national or religious hatred; illegal establishment of a religious organization; and establishment, management and participation in a religious, extremist, separatist, fundamentalist or other illegal organization. The complainant was put on a wanted list. His arrest was ordered by the Qarshi Court in Uzbekistan on the same date. On 7 April 2012, he was detained in Aktobe, Kazakhstan. In a letter dated 27 April 2012, the Uzbek Office of the Procurator General sent an extradition request to the Kazakh Office of the Procurator General regarding the complainant. The complainant's detention for the purpose of extradition was extended on 9 April 2012, 3 May 2012, 1 September 2012, 25 December 2012 and 18 January 2013.

2.4 On 25 October 2012, the First Deputy Procurator General of Kazakhstan granted the extradition request of the Office of the Procurator General of Uzbekistan on the basis of the Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters (the Minsk Convention) of 1993. The complainant appealed this decision before the Aktobe City Court No. 2. On 25 December 2012, the extradition decision was confirmed by that Court. On 3 January 2013, the complainant filed an appeal with the Aktobe Regional Court, which was rejected on 18 January 2013. In his appeals, the complainant argued that the criminal charges against him in Uzbekistan were fabricated and that he would risk torture if extradited. Before the appellate instance court, he also claimed that the proceedings in the

first instance court were unfair because an interpreter was not provided to him after he stated that he did not speak Russian. In their decisions, both courts stated that it is beyond their jurisdiction to review the legality of charges brought against the complainant in a foreign country and that their role is to assess whether the extradition is in accordance with the national legislation and international obligations of Kazakhstan. The courts also stated that the complainant's request for asylum was denied by the Committee on Migration in 2010 and did not assess further his allegations of a risk of torture upon extradition. Regarding the complainant's complaint on the failure of the first instance court to provide him with interpretation, the Aktobe Regional Court stated that the records of the first instance court proceedings suggest that neither the complainant nor his lawyer requested interpretation, despite being informed of this right by the court.

2.5 On 13 March 2013, the complainant was extradited to Uzbekistan in spite of the Committee's request for interim measures of protection aimed at suspending the extradition pending the consideration of the present case. On 12 April 2013, the complainant's counsel informed the Committee that the complainant was imprisoned in Uzbekistan. She asked the Committee to appeal to the State party's authorities to have the complainant sent back to Kazakhstan.

The complaint

3. When submitting the communication, the complainant claimed that his extradition to Uzbekistan would be in violation of article 3 of the Convention, as he would be subjected to torture there and would be imprisoned for a long period of time on the basis of fabricated charges. He states that Uzbekistan is well-known for practising torture in police and penitentiary facilities, including on extradited asylum seekers, as was the case with 29 Uzbek citizens extradited by Kazakhstan in 2011.

State party's observations on the merits

4.1 On 27 June 2013, the State party submitted its observations on the merits, informing the Committee that, on 3 May 2012, the Aktobe Court No. 2 approved the detention of the complainant for the purpose of extradition. On 4 May 2012, the Office of the Procurator General of Uzbekistan requested the State party to extradite the complainant for the purpose of criminal prosecution. On 6 October 2009, the Committee on Migration rejected the complainant's application for asylum. On 12 June 2012, UNHCR sent a note verbale to the Office of the Procurator General of Kazakhstan, expressing its disagreement with the decision of the Committee on Migration to turn down the application for asylum in view of procedural violations that took place during the consideration of the complainant's asylum request. According to the State party, the complainant was informed of his right to appeal the decision concerning his request for asylum, but he did not exercise that right. On 25 October 2012, the Office of the Procurator General made a decision to extradite the complainant to Uzbekistan. On 25 December 2012 and on 18 January 2013, respectively, the Aktobe City Court No. 2 and the Aktobe Regional Court assessed whether the extradition was in accordance with the national and international obligations of Kazakhstan. The State party submits that UNHCR agreed with the decision to extradite the complainant to Uzbekistan. The extradition took place on 13 March 2013. Taking into account that the complainant's appeal against the decision to extradite him was reviewed by all available judicial instances, whose decisions became final, and that he did not appeal the decision to refuse his asylum request, there were no legal grounds for his stay in Kazakhstan, which could be endangering national interests and security.

4.2 The complainant was extradited in accordance with the provisions of the Minsk Convention. In addition, the Uzbek authorities provided written assurances to the Office of the Procurator General of Kazakhstan that the complainant would not be persecuted on

political grounds, or for reasons of race, religion or nationality; that he would not be subjected to torture, violence or inhuman or degrading treatment; and that he would be provided with the means to defend himself, including through the assistance of lawyers.

4.3 The State party submits that there were no procedural violations in the complainant's case and there are no grounds for returning him to Kazakhstan.

Complainant's comments on the State party's observations on the merits

5.1 On 22 December 2013, counsel informed the Committee that, upon extradition to Uzbekistan, on 6 June 2013, the complainant was sentenced to 16 years in prison on charges of terrorism, founding religious-extremist, separatist and fundamentalist organizations as part of an organized group, attempting to overthrow the constitutional order and illegally exiting the country. The trial took only three and a half months, which suggests that it was not fair. According to the relatives and the lawyer of the complainant, he was forced, under torture, to confess to the charges and, allegedly owing to the torture suffered, he did not try to defend himself in court. On 6 September 2013, the Qashqadarinsky Regional Court reviewed the cassation appeal of the complainant and confirmed the decision of the first instance court.

5.2 Counsel informs that the complainant is detained with a person infected with tuberculosis. It is possible that he has contracted the disease himself, but does not receive medical treatment. Since the beginning of his imprisonment, the complainant has been sanctioned twice for breaching the internal rules of the penitentiary colony, which could exclude a possibility of an amnesty in the future, and he was also incarcerated in a punishment cell.[1]

5.3 Counsel reiterates that the decision of the Committee on Migration to reject the complainant's asylum application was groundless and unlawful. While considering the complainant's asylum request, the Committee failed to duly take into account the facts and arguments provided in his application concerning the persecution to which he and his wife were subjected, or the torture he suffered in Uzbekistan owing to his religious beliefs.[2] The domestic courts that considered the complainant's extradition appeal should have indicated an error in the assessment of the Committee and quashed its decision.

5.4 Counsel points out a contradiction in the State party's submission concerning the position of UNHCR. According to the State party, UNHCR disagreed with the decision to turn down the complainant's asylum application, but then, according to the State party, it agreed with the decision to have him extradited. Counsel states that such a change of attitude would contradict the mandate of the organization.

5.5 Regarding the argument of the State party that the extradition was based on the Minsk Convention and was in accordance with its national and international obligations, counsel claims that the State party breached its obligations under article 3 of the Convention, in which guarantees are set out against refoulement. According to counsel, this provision should be interpreted narrowly and cannot be overridden by the national or regional instruments to which the State party refers. The breach of the State party's

[1] Counsel explains that in such cells prisoners receive three meals a day, with no water or additional food in between. They are forced to wake up at 5 a.m., then the guards fold the metallic beds so that the detainees cannot rest during the day. There is only a small chair and a toilet in the cell; detainees can wash their hands only with the toilet water. They are taken outside to wash their hands and face only once a day, in the morning. The cell is damp and cold, but prisoners are allowed to wear warm clothes only if it gets very cold outside. There is no medical assistance, even if a person gets sick.

[2] Counsel refers to the facts submitted to the Committee on 14 February 2013.

obligation was aggravated by its failure to respect the Committee's request not to extradite the complainant while his case is under consideration.[3]

5.6 Further, counsel contends that the State party ignored appeals from NGOs and international organizations not to extradite the complainant. She refers, in particular, to the letter dated January 2013 from the NGO Kazakhstan International Bureau of Human Rights and Rule of Law, in which the complainant's case was compared to that of 29 asylum seekers extradited by Kazakhstan to Uzbekistan in 2011. The NGO also referred to multiple pieces of evidence indicating that people have been tortured on religious grounds in Uzbekistan, and urged the authorities to suspend the extradition.

5.7 Counsel additionally emphasizes that Kazakhstan and Uzbekistan are both members of the Shanghai Cooperation Organization and the Collective Security Treaty Organization, both of which have established lists of terrorist, extremist and separatist organizations and persons. These lists are not subject to judicial review and the names are added to them arbitrarily. She also refers to the Committee's concluding observations on the second and third periodic reports of Uzbekistan, in which the Committee expressed its concern about the widespread use of torture by police and in prisons in Uzbekistan (CAT/C/CR/28/7 and CAT/C/UZB/CO/3).

5.8 Counsel invites the Committee to find that extradition of the complainant constitutes a violation of article 3 of the Convention and to recommend that the State party provide the complainant with adequate compensation, return him to Kazakhstan and avoid similar violations in the future.

Additional information by the State party

6.1 On 11 March 2013, the State party reiterated that the claims regarding unlawful extradition of the complainant and unjustified rejection of his asylum claim are groundless. According to the national legislation, the courts can only consider a claim on substance and are not in a position to raise matters on their own initiative. They could not have reviewed the decision of the Committee on Migration regarding the complainant's asylum application, which the complainant did not appeal before the relevant courts. Taking into account that the decision of the domestic courts concerning the complainant's extradition became final, that the complainant did not appeal the decision of the Committee to turn down his application, and given the threat he could pose to the national security and interests of Kazakhstan, he was transferred to Uzbekistan under the Minsk Convention.

6.2 The claim that the extradition took place against the recommendations of UNHCR is erroneous. On 12 June 2012, the Office of the Procurator General received a note verbale from the UNHCR Regional Office, in which UNHCR expressed disagreement with the Committee on Migration to turn down the complainant's asylum application and recommended granting him international protection. However, in a note verbale dated 10 October 2012, the UNHCR Regional Office informed the Office of the Procurator General that it would leave the decision on extradition of the complainant to the State party.

6.3 After receiving the note verbale from UNHCR, the State party requested the assurances of the Uzbek authorities that the complainant would not be persecuted for political motives or for reasons of race, religion, nationality or political opinion; that he would not be subjected to torture, violence or inhuman or degrading treatment; and that he would be provided with the means to defend himself, including through legal assistance. The said guarantees were received and the State party does not have grounds for doubting

[3] Counsel compares the extradition of the complainant to the extradition of 29 persons from Kazakhstan to Uzbekistan in 2011, regardless of the Committee's request to suspend the procedure.

them. In accordance with the Minsk Convention, the State party also requested that it be provided with the materials concerning the criminal investigation against the complainant and its results. On the basis of these documents, the State party's authorities concluded that the complainant was sentenced for the crimes indicated in the extradition request and the sentence is proportionate to the gravity of the committed crimes and is not aimed at subjecting the complainant to repression, torture or inhuman treatment.

6.4 The decision to extradite the complainant was made in accordance with national and international law and there are no grounds to return him from Uzbekistan.

Issues and proceedings before the Committee

The State party's failure to cooperate and to respect the Committee's request for interim measures pursuant to rule 114 of its rules of procedures

7.1 The Committee notes that the adoption of interim measures pursuant to rule 114 of its rules of procedure, in accordance with article 22 of the Convention, is vital to the role entrusted to the Committee under that article. Failure to respect that provision, in particular through such irreparable action as extraditing an alleged victim, undermines the protection of the rights enshrined in the Convention.[4]

7.2 The Committee observes that any State party that has made a declaration under article 22 (1) of the Convention recognizes the competence of the Committee to receive and consider complaints from individuals who claim to be victims of violations of the provisions of the Convention. By making such a declaration, States parties implicitly undertake to cooperate with the Committee in good faith by providing it with the means to examine the complaints submitted to it and, after such examination, to communicate its comments to the State party and the complainant. By failing to respect the request for interim measures transmitted to the State party on 28 February 2013, the State party seriously failed in its obligations under article 22 of the Convention because it prevented the Committee from fully examining a complaint relating to a violation of the Convention, rendering the action by the Committee futile and its findings without effect.

Consideration of admissibility

8.1 Before considering any complaint submitted in a communication, the Committee must decide whether or not it is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do under article 22 (5) (a) of the Convention, that the same matter has not been and is not being examined under another procedure of international investigation or settlement.

8.2 The Committee recalls that, in accordance with article 22 (5) (b) of the Convention, it shall not consider any communication from an individual unless it has ascertained that the individual has exhausted all available domestic remedies. The Committee notes that in the instant case the State party has recognized that the complainant has exhausted all available domestic remedies. As the Committee finds no further obstacles to admissibility, it declares the communication admissible.

Consideration of the merits

9.1 The Committee has considered the communication in the light of all the information made available to it by the parties, in accordance with article 22 (4) of the Convention.

[4] See communication No. 444/2010, *Abdussamatov et al. v. Kazakhstan*, decision on admissibility of 15 November 2011, paras. 10.1 and 10.2.

9.2 The Committee must determine whether the extradition of the complainant to Uzbekistan constitutes a violation of the State party's obligations under article 3 (1) of the Convention not to expel or return ("refouler") an individual to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture. The Committee takes a decision on the question in the light of the information, which the authorities of the State party had or should have had at the time of the extradition. Subsequent events are useful for assessing the information that the State party actually had or should have had at the time of extradition.

9.3 In assessing whether the extradition of the complainant to Uzbekistan constitutes a violation of the State party's obligations under article 3 of the Convention, the Committee must take account of all relevant considerations, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights. The Committee reiterates that the existence of a pattern of gross, flagrant or mass violations of human rights in a country does not as such constitute sufficient reason for determining that a particular person would be in danger of being subjected to torture on return to that country; additional grounds must be adduced to show that the individual concerned would be personally at risk. Similarly, the absence of a consistent pattern of flagrant violations of human rights does not mean that a person might not be subjected to torture in his or her specific circumstances.

9.4 The Committee recalls that, in its general comment No. 1 (1996) on the implementation of article 3 of the Convention in the context of article 22, it noted that the risk of torture must be assessed on grounds that go beyond mere theory or suspicion. However, the risk does not have to meet the test of being "highly probable", but it must be personal and present (para. 6). In this regard, in previous decisions, the Committee has determined that the risk of torture must be foreseeable, real and personal .

9.5 The Committee notes counsel's claim that torture and ill-treatment, in particular of extradited asylum seekers, seems systematic in Uzbekistan. It also notes the detailed allegations that, in the past, prior to his departure to Kazakhstan, the complainant was exposed to persecution on religious grounds and ill-treatment by the Uzbek authorities. The Committee takes note, next, of counsel's argumentation that the proceedings in the State party leading to the extradition of the complainant were not fair, as no interpreter was provided; the courts did not consider in substance the complainant's allegations of the risk of torture upon extradition or review the decision of the Committee on Migration to turn down his application for asylum. It further notes the State party's assertion that the complainant and his lawyer were notified about the right to request an interpreter, but did not do so; that UNHCR, although initially disagreeing with the outcome of the asylum proceedings, left it to the State party to decide on the complainant's extradition. The State party also expressed its view that the extradition proceedings were in accordance with both the domestic and international norms and that the courts, which considered the complainant's appeals against the extradition decision, were not competent to review the decision of the Committee on Migration to turn down his asylum request. The Committee takes due account of the State party's statement about the assurances obtained from the Uzbek authorities that the complainant would not be persecuted for political motives, or for reasons of race, religion, nationality or political opinion; that he would not be subjected to torture, violence or inhuman or degrading treatment. It also notes the information submitted by counsel that, following his extradition to Uzbekistan, the complainant has been sentenced to 16 years' imprisonment there, with pressure and ill-treatment allegedly used during the criminal proceedings, resulting in the complainant's forced confession of crimes and his silence during the trial. The Committee finally notes the State party's argument that the criminal investigation corresponded to the charges against the complainant specified in the request for his extradition, and that the sentence was not aimed at subjecting him to repression or torture.

9.6 With regard to the existence of a consistent pattern of gross, flagrant or mass human rights violations, the Committee recalls its concluding observations on the third periodic report of Uzbekistan, in which it expressed its concern about numerous, ongoing and consistent allegations of the routine use of torture and other cruel, inhuman or degrading treatment or punishment by law enforcement and investigative officials or with their instigation or consent, and that persons who sought refuge abroad and were returned to the country had been kept in detention at unknown places and possibly subjected to breaches of the Convention (see CAT/C/UZB/CO/3, paras. 6 and 9).

9.7 The Committee notes that the complainant is reportedly practising his religion outside of official Uzbek institutions. It also notes that the complainant was extradited pursuant to a request from Uzbekistan accusing him of serious crimes, including religious extremism and attempts to overthrow the constitutional order, and on the basis of the State party's assessment that he could pose a threat to the State party's interests and security. The Committee reiterates its concern, expressed in its concluding observations on the second periodic report of Kazakhstan, about forcible returns to Uzbekistan in the name of regional security, including in the context of the fight against terrorism, and the unknown conditions, treatment and whereabouts of persons returned (see CAT/C/KAZ/CO/2, para. 15). It also notes that the non-refoulement principle in article 3 of the Convention is absolute and a possible security risk does not absolve the State party from honouring its obligation to refrain from expelling or returning ("refouler") an individual to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture.[5]

9.8 In the circumstances of the present case, the Committee considers that, in its own concluding observations, as well as in the light of the information presented to it in the present case, the pattern of gross, flagrant or mass violations of human rights and the significant risk of torture or other cruel, inhuman or degrading treatment in Uzbekistan, in particular for individuals practising their faith outside of the official framework, has been sufficiently established. In this context, it observes that the complainant argued that he was subjected to religious persecution, including detention and torture, before his departure to Kazakhstan.

9.9 The Committee recalls that, under the terms of its general comment No. 1, it will give considerable weight to findings of fact that are made by organs of the State party concerned, but that the Committee is not bound by such findings and has the power, provided under article 22 (4) of the Convention, to carry out a free assessment of the facts based upon the full set of circumstances in every case.[6] In the present case, the Committee observes that the complainant, who has been previously prosecuted in Uzbekistan for his religious beliefs, and who was charged with the creation of an extremist organization and terrorism in Uzbekistan and extradited by the State party on the basis of those charges, has sufficiently demonstrated that a foreseeable, real and personal risk of torture existed for him upon return to Uzbekistan. In such circumstances, the courts of the State party were obliged to duly assess the possible risk of torture run by the complainant under both national (art. 532, para. 5, of the Criminal Procedure Code) and international (such as art. 3 of the Convention) provisions. The Committee therefore concludes that the State party's authorities have failed in their duty to carry out an individualized risk assessment before

[5] See, mutatis mutandis, communications No. 444/2010, *Abdussamatov et al. v. Kazakhstan*, No. 39/1996, *Paez v. Sweden*, Views adopted on 28 April 1997, No. 110/1998, *Núñez Chipana v. Venezuela*, Views adopted on 10 November 1998, para. 5.6, and No. 297/2006, *Singh Sogi v. Canada*, decision adopted on 16 November 2007.

[6] General comment No. 1 and, inter alia, communication No. 356/2008, *N.S. v. Switzerland*, decision adopted on 6 May 2010.

returning the complainant to Uzbekistan. Accordingly, the Committee concludes that the State party's extradition of the complainant to Uzbekistan constitutes a breach of article 3 of the Convention.

9.10 Regarding the diplomatic assurances received by the State party from the Uzbek authorities as sufficient protection against this manifest risk, the Committee recalls that such assurances cannot be used as an instrument to avoid the application of the principle of non-refoulement. The Committee notes that the State party failed to provide any sufficiently specific details as to whether it has engaged in any form of post-expulsion monitoring and whether it has taken any steps to ensure that the monitoring is objective, impartial and sufficiently trustworthy.

10. The Committee, acting under article 22 (7) of the Convention, decides that the facts before it reveal a breach by the State party of articles 3 and 22 of the Convention.

11. In conformity with article 118, paragraph 5, of its rules of procedure, the Committee urges the State party to provide redress for the complainant, including regular visits and effective monitoring to ensure that he is not subjected to treatment contrary to article 3 of the Convention. The complainant is also entitled to adequate compensation. The Committee wishes to be informed, within 90 days, of the steps taken by the State party to respond to these Views.

Appendix

[Original: English]

Individual (dissenting) opinion of Committee member Alessio Bruni

1. In paragraph 10 of the Committee's decision on this case, it is stated: "The Committee, acting under article 22 (7) of the Convention, decides that the facts before it reveal a breach by the State party of articles 3 and 22 of the Convention".

2. It is my opinion that the following formulation of the decision would have better reflected the facts of the case:

> The Committee, acting under article 22 (7) of the Convention, decides that the facts before it reveal a breach by the State party of article 3 of the Convention.
>
> In addition, the Committee wishes to recall that, on 28 February 2013, it requested the State party not to extradite the complainant to Uzbekistan while his communication was under consideration by the Committee, in accordance with rule 114 of its rules of procedure. Nevertheless, the complainant was extradited to Uzbekistan on 13 March 2013.
>
> The non-compliance by the State party with the Committee's request caused a serious damage to the effectiveness of the Committee's deliberations on the case under consideration and raised a serious doubt about the willingness of the State party to implement article 22 of the Convention in good faith.

3. It is my opinion that, in any case, the Committee should have informed the State party in advance that, if it did not comply with the Committee's request for interim measures, the Committee could consider such non-compliance as a violation of article 22 of the Convention. A State party cannot be held responsible for a violation of the Convention without being informed of the Committee's views on the consequences for the State party of its non-compliance with one of the Committee's rules of procedure.

United Nations CAT/C/54/D/539/2013

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

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Committee against Torture

Communication No. 539/2013

Decision adopted by the Committee at its fifty-fourth session (20 April–15 May 2015)

Submitted by:	A. B. (represented by counsel, Katarina Nilsson)
Alleged victim:	The complainant
State party:	Sweden
Date of complaint:	8 March 2013 (initial submission)
Date of present decision:	11 May 2015
Subject matter:	Deportation to the Russian Federation
Procedural issue:	Non-substantiation of claim
Substantive issue:	Risk of torture upon return to country of origin
Article of the Convention:	Article 3

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Annex

Decision of the Committee against Torture under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (fifty-fourth session)

concerning

Communication No. 539/2013*

Submitted by:	A. B. (represented by counsel, Katarina Nilsson)
Alleged victim:	The complainant
State party:	Sweden
Date of complaint:	8 March 2013 (initial submission)

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 11 May 2015,

Having concluded its consideration of complaint No. 539/2013, submitted to it by A. B. under article 22 of the Convention,

Having taken into account all information made available to it by the complainant, his counsel and the State party,

Adopts the following:

Decision under article 22 (7) of the Convention

1.1 The complainant is A. B., a Russian national born in 1986. His request for asylum in Sweden was rejected and, at the time of submission of the complaint, he was awaiting deportation to the Russian Federation. He claims that such deportation would constitute a violation by Sweden of his rights under article 3 of the Convention against Torture. The complainant is represented by counsel.

1.2 On 15 March 2013, the Committee requested the State party to refrain from expelling the complainant to the Russian Federation while his complaint was under consideration by the Committee.

The facts as submitted by the complainant

2.1 The complainant is a Russian citizen of Chechen origin, born in the Dubovsky District of the Rostov Oblast in Southern Russia. He professes the Muslim faith. In 2007, he moved to the Republic of Chechnya with his parents and brothers and settled in the village of Dai in the Shatoy region, approximately 60 kilometres from Grozny. The North

* The following members of the Committee participated in the consideration of the present communication: Essadia Belmir, Alessio Bruni, Satyabhoosun Gupt Domah, Felice Gaer, Abdoulaye Gaye, Claudio Grossman, Jens Modvig, George Tugushi and Kening Zhang.

Caucasian armed resistance still had a stronghold in the region. The complainant's father opened a shop that sold groceries and clothes. Customers included personnel of the Chechen authorities as well as members of the armed resistance.

2.2 In October 2010, about 10 men wearing military uniforms came to the complainant's home and took him away. The complainant believed that they were members of the Ministry of Internal Affairs in the Shatoy region. They said that they needed to question him and took him to the militia station of Shatoy district. They told him that they knew that he sold groceries to the resistance fighters and that he helped them; that he delivered groceries to their bases in the mountains; and that he was an accomplice of the resistance. The complainant explained that he sold groceries to the armed resistance as he had no choice because they were always armed; however, he was not involved in or related to their activities. Thereafter, he was taken to another room where he was handcuffed and beaten with a truncheon and a rifle butt. He was hit all over his body, except for his face. He was put to sit on a chair with his arms attached to a bar and electrodes were attached to his little finger. One of the interrogators turned on the device which delivered electricity. They told that they knew that he had been cooperating with the resistance fighters and that he should confess. The complainant said that he had nothing to confess. After two hours of torture, he was left alone for about one hour. Thereafter, his arms were released from the bar and he was handcuffed. In the evening, "the boss" came in with some documents and told him that if he did not sign them, he would not get out alive. The complainant signed the documents, without reading the contents. He was then released.

2.3 The next day about 10 other men came to the complainant's home and took him to the Office of the Russian Commandant in Khankala, Grozny. The documents that he had signed were presented, and new accusations were levelled at him. They accused him of being a former resistance fighter who had obtained amnesty but who continued to cooperate with the fighters by selling them groceries and that he had confessed in the documents that he had signed. He tried to explain to the federal authorities that he had been threatened and tortured in Shatoy and forced to sign the documents. He was taken to a small room without windows, located in the basement of the building, where he was again threatened, beaten and exposed to electrical shocks while in a sitting position, while hanging from a wall with his arms tied in front of him, and with electrodes attached to his feet and legs. He was doused with cold water, which made the electrical shocks even more painful. He lost consciousness. Following each torture session, he was placed in a 2m x 2m incarceration cell, which had a wooden bunk but no blanket. His clothes were never removed and he was left in his wet track pants and t-shirt. He was given some kind of porridge or boiled potatoes to eat once or twice a day. He was detained for two weeks and subjected to interrogations and torture several times a day. The interrogators in both Shatoy and Khankala were Chechens.

2.4 The complainant was released on the condition that he cooperated with the authorities by establishing contact or infiltrating the resistance fighters' base in order to provide intelligence. He was told that if he failed to cooperate, he or his relatives would be killed. He went back to Dai, but his father did not think that it would be safe for him to stay there so he took him to the village of Nadterechnoe to stay with a friend.

2.5 Two or three days after his release, the authorities came to his home to look for him. As he had already left, his whole family was subjected to beatings. His wife and children moved to her parents' home. Meanwhile, in Nadterechnoe, the complainant stayed indoors most of the time. His father visited him about twice a month.

2.6 After three to four months, his parents came to see him and told him that they had arranged for him to leave the country. They took him to the outskirts of Grozny and he left Chechnya in a van, together with his uncle and two cousins. They changed vans twice before arriving in Sweden on 17 May 2011. The complainant had no passport; however, he

was not asked to produce any identity document on his way to Sweden. On 19 May 2011, the complainant applied for asylum in Sweden, where he was staying with a cousin, who had limited contact with his family. Through the cousin, he found out that the Chechen authorities had been looking for him again.

2.7 On 3 October 2011, the Swedish Migration Board rejected the complainant's request for asylum, finding that his story lacked credibility. The complainant notes, in particular, that the Board considered that it was not credible that he was released one day after his initial arrest, then re-arrested and released again after two weeks, although he was accused of having committed a serious crime. The complainant states that the Board claimed that such activity did not correspond to the known practices of the Chechen authorities, as reported by human rights organizations. The complainant also points out that the Board noted that: (i) he could not explain how his father managed to visit him in Nadterechnoe without disclosing his location; (ii) he stated that he did not have any scars or bruises as a result of the alleged torture and severe ill-treatment suffered; (iii) there was no information that his relatives had been persecuted by the authorities; and (iv) he did not submit any documentation in support of his claims.

2.8 On an unspecified date, the complainant appealed the decision of the Swedish Migration Board before the Migration Court in Malmö. He alleged that the course of action that he described was "normal" in Chechnya; that he was released after one day because the Chechen authorities knew that he and his family would be afraid; and that the persecution was a measure of control rather than a preliminary investigation. He pointed out that many people in Chechnya were suspected of collaborating with the resistance, which made it impossible for the authorities to conduct surveillance on all of them and their relatives. He asserted that it was most likely for that reason that his father was not followed by the authorities when he visited him in Nadterechnoe. The complainant also noted that the human rights information referred to by the Board dated from 2009 and that there were new, updated reports, including from the State party, indicating that the human rights situation in Chechnya had worsened in 2010. On 18 September 2012, the Migration Court rejected the complainant's appeal. Although the Court found parts of the complainant's story to be supported by available country information, it still did not find the complainant's allegations fully convincing.

2.9 On an unspecified date, the complainant filed an application for leave to appeal the decision of the Migration Court before the Migration Court of Appeal. The application was rejected on 17 October 2012 and the decision to expel the complainant became final on 7 November 2012.

2.10 On 19 November 2012, the complainant met with the Migration Board about his removal to the Russian Federation. The Swedish authorities encouraged him to return and offered him 30,000 Swedish kronor. On 28 November 2012, he informed the authorities that he was not interested in the money. On 8 March 2013, the complainant was informed that he had four weeks to leave the country voluntarily.

The complaint

3.1 Given his personal situation and in the light of the previous persecution which he had suffered in Chechnya, the complainant claims that the Swedish authorities did not adequately assess the risk to which he would be subjected if returned to the Russian Federation. Returning him to the Russian Federation would violate article 3 of the Convention.

3.2 He argues that torture is widely used in Chechnya to keep the population under control. In his case, there was no ground for his arrest nor for a criminal investigation. All the charges were fabricated and the officials no doubt knew that. The fact that torture is

used to extract information and force confessions in fabricated criminal cases cannot be unknown to the Swedish migration authorities.

State party's observations on admissibility and merits

4.1 By note verbale of 16 September 2013, the State party submitted its observations on the admissibility and merits of the communication. Based on the facts of the case, the State party notes that the complainant arrived in Sweden on 17 May 2011 and applied for asylum two days later. The Swedish Migration Board rejected his application and ordered his deportation to the Russian Federation on 3 October 2011. The complainant appealed that decision before the Migration Court, which rejected the appeal on 18 September 2012. On 17 October 2012, the Migration Court of Appeal refused to grant the complainant leave to appeal that decision, and the decision to expel the complainant became final and non-appealable on 7 November 2012.

4.2 The State party further notes that according to article 22 (5) (a) of the Convention, the Committee shall not consider any communication from an individual unless it has ascertained that the same matter has not been, and is not being, examined under another procedure of international investigation or settlement and states that it is not aware whether the present case was or is subject to any other such investigation or settlement. However, the State party acknowledges that all available domestic remedies have been exhausted in the present case.

4.3 The State party maintains that the complainant's assertion that he would be at risk of being treated in a manner that would violate article 3 of the Convention if returned to the Russian Federation fails to rise to the minimum level of substantiation required for purposes of admissibility. It submits that the present communication is manifestly unfounded and thus inadmissible under article 22 (2) of the Convention and rule 113 (b) of the Committee's rules of procedure.[1] Should the Committee conclude that the communication is admissible, the issue before it would be whether the forced return of the complainant to the Russian Federation would violate the obligation of Sweden under article 3 of the Convention not to expel or return a person to another state where there are substantial grounds for believing that he or she would be in danger of being subjected to torture.

4.4 The State party notes that, when determining whether the forced return of a person to another country would constitute a violation of article 3 of the Convention, the Committee must take into account all relevant considerations, including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights. However, the Committee has repeatedly emphasized that the aim of such a determination is to establish whether the individual concerned would be personally at risk of being subjected to torture in the country to which he or she would be returned. Therefore, it follows that the existence of such a pattern in itself is not a sufficient ground for concluding that an individual would be at risk of being subjected to torture upon his or her return to that country. Additional grounds must exist to show that the individual concerned would be "personally" at risk.[2]

4.5 In the light of the foregoing, the State party notes that, in determining whether the forced return of the complainant to the Russian Federation would constitute a breach of

[1] The State party refers to communication No. 216/2002, *H. I. A. v. Sweden*, decision of inadmissibility adopted on 2 May 2003, para. 6.2.

[2] The State party refers to communications No. 150/1999, *S. L. v. Sweden*, Views adopted on 11 May 2001, para. 6.3; and No. 213/2002, *E. J. V. M. v. Sweden*, Views adopted on 14 November 2003, para. 8.3.

article 3 of the Convention, the following considerations were taken into account: (i) the general human rights situation in the Russian Federation; and, in particular, (ii) whether the complainant would be "personally" at risk of being subjected to torture if returned.

4.6 Furthermore, the State party recalls the Committee's jurisprudence, according to which the burden of proof in cases like the present one rests with the complainant who must present an arguable case establishing that he runs a foreseeable, real and personal risk of being subjected to torture[3] and the risk of torture must be assessed on grounds that go beyond mere theory or suspicion; if the risk does not meet the test of being highly probable, it must be personal and present.[4]

4.7 The State party notes that the Russian Federation is a party to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment as well to the International Covenant on Civil and Political Rights. It therefore assumes that the Committee is well aware of the general human rights situation in that country, including in the North Caucasus area. In that regard, the State party refers to various reports containing information on the human rights situation in the Russian Federation.[5]

4.8 The State party acknowledges that, while many reports indicate that the general level of violence and serious human rights violations in the Chechen Republic have decreased in recent years, there are still reports about violations such as disappearances, abuse and killings. The State party does not underestimate the concerns that may legitimately be expressed with regard to the current human rights situation in the Russian Federation and, more specifically in the North Caucasus area. However, the current situation in Chechnya does not in itself suffice to establish that the general situation in the region is such that deportation of the complainant would constitute a violation of article 3 of the Convention.[6] Therefore, the State party contends that the deportation of the complainant to the Russian Federation would only constitute a breach of article 3 of the Convention, if the complainant can show that he would be personally at risk of being subjected to torture in Chechnya. In the present case, the complainant has failed to substantiate his claims to that effect.

4.9 The State party points out that several provisions in the Swedish Aliens Act reflect the same principles as those set out in article 3 of the Convention and the Swedish migration authorities apply the same kind of test when considering an application for asylum under the Aliens Act as that applied by the Committee when examining communications under the Convention. The fact that the Swedish authorities applied such a test with regard to the complainant's asylum request is indicated by the references in their decisions to chapter 4, sections 1, 2 and 2 (a), of the Aliens Act. Furthermore, the State party points out that chapter 12, sections 1 to 3, of the Aliens Act provide that the expulsion of an alien may never be enforced to a country where there are reasonable grounds to assume that the alien would be in danger of being subjected to, inter alia, torture or other

[3] See, for example, communications No. 178/2001, *H. O. v. Sweden*, Views adopted on 13 November 2001, para. 13; and No. 203/2002, *A. R. v. the Netherlands*, Views adopted on 14 November 2003, para. 7.3.

[4] See, for example, the Committee's general comment No. 1(1997) on the implementation of article 3 of the Convention in the context of article 22, paras. 5–7.

[5] See United States of America, Department of State, Human Rights Report – Russia 2012; Amnesty International, Report 2012 – Russian Federation; Human Rights Watch, World Report 2012: Russia; Danish Immigration Service, Chechens in the Russian Federation – residence registration, racially motivated violence and fabricated criminal cases, 4/2012, August 2012; Swedish Migration Board, Country Profile – Russia (Landprofil Ryssland), 25 February 2011; Sweden, Ministry for Foreign Affairs, Mänskliga rättigheter i Ryska Federationen 2011.

[6] See, for example, European Court of Human Rights, *I v. Sweden*, application No. 61204/09, judgement of 5 September 2013, para. 58.

inhuman or degrading treatment or punishment, or to a country where the alien would not be protected from being sent on to a country in which he or she would be at such risk.

4.10 The State party also notes that the national authorities are in a very good position to assess the information submitted by an asylum seeker and to appraise the credibility of his or her claims. In that regard, the State party underlines that, in the present case, both the Migration Board and the Migration Court conducted a thorough examination of the complainant's case. As part of the asylum application process, the complainant was interviewed by Migration Board. The purpose of the interview was to give him an opportunity to present the reasons why he needed protection and to explain all the facts relevant to the Migration Board's assessment. The interview lasted 3 hours and 20 minutes and was conducted in the presence of an interpreter, who the complainant confirmed that he understood well. The complainant has also argued his case in writing before the Migration Board and the migration courts. The Migration Court also held an oral hearing during which the complainant presented his arguments. The complainant was represented by legal counsel throughout the asylum application process. Against that background, the State party holds that the Migration Board and the migration courts had sufficient information, together with facts and documentation, to constitute a solid basis for making a well-informed, transparent and reasonable assessment of the complainant's need for protection in Sweden.

4.11 The State party recalls the Committee's general comment No. 1 (1997) on article 3 of the Convention in the context of article 22, which states that the Committee is not an appellate, a quasi-judicial or an administrative body, and that considerable weight will be given to findings of facts that are made by organs of the State party concerned, as well as its jurisprudence.[7] Moreover, the Committee has held that it is for the courts of the States parties to the Convention, and not for the Committee, to evaluate the facts and evidence in a particular case, unless it can be ascertained that the manner in which the evaluation was made was clearly arbitrary or amounted to a denial of justice.[8]

4.12 In the light of the aforementioned and the fact that the Migration Board and the migration courts are specialized bodies with particular expertise in the field of asylum law and practice, the State party contends that there is no reason to conclude that the national rulings were inadequate or that the outcome of the domestic proceedings was arbitrary in any way or that they amounted to a denial of justice in the present case. The State party submits that great weight must be attached to the opinions of the Swedish migration authorities, as expressed in their decisions to expel the complainant to the Russian Federation.

4.13 The State party observes that the complainant alleged that expelling him to the Russian Federation would be a violation of article 3 of the Convention, as he would risk being subjected to torture because he had been suspected of supporting the rebels in the Chechnya region by selling groceries from his father's shop to them. However, the complainant emphasized that he had never sympathized with the rebels nor participated in their activities. Despite that, he alleged that he was arrested, detained and subjected to torture on two occasions. In that regard, the State party, like the migration authorities, finds many aspects of the complainant's story contradictory and vague and raises questions about his general credibility. In particular, the complainant has not provided any medical documentation showing that he had been subjected to ill-treatment. During the domestic

[7] See the Committee's general comment No. 1 (1997) on the implementation of article 3 of the Convention in the contexi of article 22, para. 9; also communication No. 277/2005, *N. Z. S. v. Sweden*, decision adopted on 22 November 2006, para. 8.6.

[8] See, for example, communication No. 219/2002, *G. K. v. Switzerland*, Views adopted on 7 May 2003, para. 6.12.

proceedings, the complainant stated that there were no visible scars or other injuries on his body from the torture that he allegedly suffered. In that regard, the State party, like the migration authorities, finds it implausible that a person who had allegedly been subjected to severe torture has no scars or signs of such treatment on his body. The State party stresses that it is up to the complainant to establish, prima facie, his asylum case. The State party also maintains that, where there is no evidence of alleged abuse or ill-treatment, there is no obligation on the part of the migration authorities to initiate a medical investigation.[9]

4.14 The State party shares the conclusions of the migration authorities that several aspects of the complainant's account of his experiences are questionable as available country information only partially supports the story that he presented to the domestic authorities. Even if his statements concerning the first arrest and the claim that he was forced to sign a confession might be supported by certain publicly available reports, the country information does not support the "practice" alleged by the complainant that he was re-arrested after only one night of being released the first time, then he was sought almost immediately after being released the second time, despite the condition and assignment that he claims was given to him. In relation to the first arrest, the State party notes that it is normal that there is an imminent risk that a person against whom the authorities have levelled serious accusations, who has been deprived of his liberty and who has been subjected to extensive assaults by the authorities would go into hiding upon release in order to avoid the authorities. Therefore, the State party does not find it plausible that the Chechen authorities would have released him without any commitments on his part, as suggested by the complainant.

4.15 Moreover, in relation to the second arrest, the State party submits that the manner in which the complainant was supposed to execute the task assigned to him seems unlikely. It also appears improbable that his father would have been able to visit him regularly despite the authorities' interest in him. It would have been important to consider the associated risk that the complainant's hiding place would be revealed and that he and his friend would be exposed to danger. If the authorities had such an interest in the complainant as he alleges, they would have been able to find him either by following his father or by interrogating friends of the family.

4.16 The State party refers to available country information, according to which a substantial proportion of the population in the Chechen Republic has supported the rebels at some point, and highlights the fact that the authorities are currently not interested in people who have done so only sporadically. It is also clear that the Chechen authorities focus on persons suspected of having supported or collaborated with high-profile rebels and who have provided substantial support for a longer period of time.[10] The State party also notes that the complainant has not provided any documentation or evidence indicating that he is wanted by the authorities, nor has he submitted any documents showing that there are investigations or proceedings pending against him before the Chechen authorities.

4.17 Moreover, the complainant alleged that the authorities threatened to kill his family when they were searching for the complainant at his house. However, after he left the Russian Federation, his cousin was in touch with his father and was informed that the family is alive. The State party finds that, considering the Chechen authorities' alleged interest in the complainant, the allegations regarding threats to his family and the fact that to date nothing has happened to his family further undermines the credibility of the complainant's story.

[9] See, for example, communication No. 464/2011, *K. H. v. Denmark*, decision adopted on 23 November 2012, para. 8.8.

[10] See Swedish Migration Board, Country Profile – Russia, 25 February 2011, pp. 23–24.

4.18 The State party submits that the complainant's account of what happened to his family is vague and partially contradictory. The complainant first told the Migration Board that his father had told him that his wife and children had been sent to his wife's parents when he was hiding from the Chechen authorities in Nadterechnoe. However, during the oral hearing before the Migration Court, the complainant claimed that the information regarding his family had come from his cousin, after he had arrived in Sweden. The State party notes that the complainant has not given a credible explanation for that discrepancy in his account.

4.19 In the light of the foregoing, the State party notes that, in accordance with the principle of the burden of proof in asylum cases, it is appropriate to require that an applicant provides all relevant information, tells the truth and helps the asylum officer to clarify all the facts in the case. The applicant should also make an effort to support his statements by providing any available evidence and giving a satisfactory explanation for any lack of evidence.[11] Only when that has been done can the asylum-seeking applicant be granted the benefit of the doubt.

4.20 In sum and with reference to the foregoing, the State party submits that the circumstances invoked by the complainant are not sufficient to show that the alleged risk of torture fulfils the requirements of being foreseeable, real and personal. Accordingly, the enforcement of the expulsion order would, under the present circumstances, not constitute a violation of article 3 of the Convention. Since the complainant's claim under article 3 fails to rise to the basic level of substantiation, the communication should be declared inadmissible as manifestly unfounded.

4.21 Finally, the State party notes that the complainant was born and raised in the Dubovsky District of Rostov Oblast, where he lived until 2007, that is, when he was 20 years old. It is clear from his domestic passport, which he submitted to the Swedish authorities, that he was registered in Chechnya in January 2007. Hence, the complainant has lived most of his life outside Chechnya. Furthermore, according to his domestic passport, his marriage was registered in Rostov on 19 November 2009. During the oral hearing before the Migration Court, he stated that his wife lived with her family in Rostov and that her family, like his own, commuted between Rostov and Chechnya. The complainant finished upper secondary school and stated that he is in good physical and mental health. In the State party's view, no information has emerged about his personal situation to indicate that he would be unable to provide for himself in Rostov or anywhere else in the Russian Federation, even in the absence of an established social network. Against that background, the State party asserts that it is possible and reasonable for the complainant and his family to consider resettling in Rostov or in another part of the Russian Federation if they, for reasons other than those alleged in the present case, feel threatened, for example, by the unstable situation in the Chechen Republic.

4.22 In that regard, the State party notes that, based on relevant Russian legislation, it seems that citizens are not obliged to return to their hometown to cancel their registration before changing their place of residence. Therefore the complainant could immediately take up residence and register in a different place upon return to the Russian Federation.[12]

[11] See Office of the United Nations High Commissioner for Refugees, *Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees*, articles 195 and 205 (a).

[12] See, for example, European Court of Human Rights, *A.M. and Others v. Sweden*, application No. 38813/08, decision adopted on 16 June 2009.

Complainant's comments on the State party's observations

5.1 On 3 January 2014, the complainant submitted his comments on the State party's observations. He states that the State party failed to explain why "the application of the State party's comprehensive legislation concerning asylum proceedings has failed" in the present case and that it merely reiterates the arguments and considerations made by the Swedish Migration Board. The complainant observes that the State party neither acknowledges nor denies that he was subjected to torture in the past, but only refers to a number of circumstances and facts allegedly demonstrating that his story is not credible. The actual act of torture has been neglected and not properly investigated.

5.2 The complainant adds that, in December 2013, the Swedish Amnesty Fund granted him the necessary funding to undergo psychological and medical examinations in order to investigate the impact of the ill-treatment to which he was subjected in Chechnya.[13]

Issues and proceedings before the Committee

Consideration of admissibility

6.1 Before considering any claim contained in a communication, the Committee must decide whether it is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do under article 22, (5) (a) of the Convention, that the same matter has not been and is not being examined under another procedure of international investigation or settlement.

6.2 The Committee recalls that, in accordance with article 22 (5) (b) of the Convention, it shall not consider any communication from an individual unless it has ascertained that the individual has exhausted all available domestic remedies. The Committee notes that, in the present case, the State party has acknowledged that the complainant has exhausted all available domestic remedies. Accordingly, the Committee finds no further obstacles to the admissibility of the communication. It declares the communication admissible and proceeds to its examination on the merits.

Consideration of the merits

7.1 In accordance with article 22 (4) of the Convention, the Committee has considered the present communication in the light of all information made available to it by the parties concerned.

7.2 In the present case, the issue before the Committee is whether the return of the complainant to the Russian Federation would constitute a violation of the State party's obligation under article 3 of the Convention not to expel or to return ("refouler") a person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture.

7.3 The Committee must evaluate whether there are substantial grounds for believing that the complainant would be personally in danger of being subjected to torture upon return to the Russian Federation. In assessing that risk, the Committee must take into account all relevant considerations, pursuant to article 3 (2) of the Convention, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights. However, the Committee recalls that the aim of such determination is to establish whether the individual concerned would be personally at a foreseeable and real risk of being subjected to torture in the country to which he or she would be returned. It follows that the

[13] No further information, in particular on the results of the examination, was provided.

existence of a pattern of gross, flagrant or mass violations of human rights in a country does not as such constitute sufficient reason for determining that a particular person would be in danger of being subjected to torture on return to that country; additional grounds must be adduced to show that the individual concerned would be personally at risk. Conversely, the absence of a consistent pattern of flagrant violations of human rights does not mean that a person might not be subjected to torture in his or her specific circumstances.

7.4 The Committee recalls its general comment No. 1 (1997) on the implementation of article 3 of the Convention in the context of article 22, according to which the risk of torture must be assessed on grounds that go beyond mere theory or suspicion. While the risk does not have to meet the test of being "highly probable" (para. 6), the Committee recalls that the burden of proof generally falls on the complainant, who must present an arguable case that he faces a "foreseeable, real and personal" risk.[14] Although, under the terms of its general comment No. 1, the Committee is free to assess the facts on the basis of the full set of circumstances in every case, considerable weight is given to the findings of fact that are made by organs of the State party concerned (para. 9).[15]

7.5 In the present case, the complainant alleges that if he is returned to the Russian Federation he may be subjected to torture as he had been subjected to ill-treatment, including beatings and electric shocks, in 2010 by Chechen officials and that torture is widely used in Chechnya with the "purpose" of keeping people under control.

7.6 In that connection, the Committee notes that, even if it accepts the claim that the complainant was subjected to torture in the past, the question is whether he still remains at risk of torture in the Russian Federation. The Committee notes that, at present, the human rights situation in the Russian Federation is a matter of concern, in particular in the northern Caucasus region. The Committee recalls that, in 2012, it had expressed concern at numerous, ongoing and consistent reports of serious human rights abuses inflicted by or at the instigation or with the consent or acquiescence of public officials or other persons acting in official capacities in the northern Caucasus, including the Chechen Republic, including torture and ill-treatment, abductions, enforced disappearances and extrajudicial killings.[16] Nonetheless, the Committee recognizes that the occurrence of human rights violations in his/her country of origin is not sufficient, in itself, to permit to conclude that a complainant, would be personally at risk of being subjected to torture.[17]

7.7 The Committee notes that the State party has drawn attention to the inconsistencies and contradictions in the complainant's accounts and submissions, which cast doubts on his general credibility and on the veracity of his claims. In particular, the State party notes that the complainant had stated to the asylum authorities that he had never sympathized with the rebels nor taken part in their activities, but had only sold them groceries when they came to his father's shop. However, according to the State party, despite the fact that he had never been involved in the rebels' activities, he also claimed that he had been arrested, detained and allegedly tortured. Furthermore, the State party notes that the available country information does not support the existence of a practice such as the one alleged by the complainant, that he was sought at his home almost immediately after being released from the first arrest and that he was re-arrested despite being given an "assignment" to carry out.

[14] See also, communication No. 203/2002, *A. R. v. the Netherlands*, Views adopted on 14 November 2003, para. 7.3.

[15] See, inter alia, communication No. 356/2008, *N. S. v. Switzerland*, decision adopted on 6 May 2010, para. 7.3.

[16] See CAT/C/RUS/CO/5, para. 13.

[17] See, inter alia, communication No. 519/2012, *T. M. v. Republic of Korea*, decision adopted on 21 November 2014, para. 9.7.

In addition, according to the State party, it appears highly unlikely that the complainant would have been given the assignment to infiltrate the rebels' base despite the lack of cooperation on his part during his second detention. Furthermore, the State party noted that the complainant affirmed that his father visited him regularly while he was staying with friends in the village of Nadterechnoe. The State party reasons that, if the authorities had such an interest in the complainant, as he alleges, and they were indeed looking for him after his second release, they would have been able to find him either by following his father or by interrogating friends of the family. Moreover, the State party notes that the complainant did not provide any medical documentation to support his claims that he had been subjected to ill-treatment nor any documentation or evidence indicating that he was wanted by the Chechen authorities, nor has he submitted any documents showing that investigations or proceedings are pending against him before the Chechen authorities. In that connection, the Committee notes that the complainant has also not submitted any evidence to it to substantiate his claim that he would risk being subjected to torture by the authorities if returned to the Russian Federation.

7.8 The Committee further observes that the complainant merely stated before the Swedish Migration Board and the Migration Court that he feared that he would be subjected to torture if returned to the Russian Federation as he had been tortured in the past and would surely be targeted again. However, the Committee notes that the authorities of the State party thoroughly evaluated the complainant's allegations at the domestic level and found that they lacked credibility.

7.9 The Committee recalls its jurisprudence, whereby the risk of torture must be assessed on grounds that go beyond mere theory, and indicates that it is generally for the complainant to present an arguable case.[18] In the light of the considerations above and on the basis of all the information submitted to it by the complainant, including with regard to the general human rights situation in the Russian Federation, the Committee considers that the complainant has not provided sufficient evidence to enable it to conclude that his deportation to his country of origin would expose him to a foreseeable, real and personal risk of torture within the meaning of article 3 of the Convention.

8. Accordingly, the Committee, acting under article 22 (7) of the Convention, concludes that the complainant's return to the Russian Federation would not constitute a breach of article 3 of the Convention by the State party.

[18] See communications No. 298/2006, *C.A.R.M. et al. v. Canada*, decision adopted on 18 May 2007, para. 8.10; No. 256/2004, *M. Z. v. Sweden*, decision adopted on 12 May 2006, para. 9.3; No. 214/2002, *M. A. K. v. Germany*, decision adopted on 12 May 2004, para. 13.5; No. 150/1999, *S. L. v. Sweden*, decision adopted on 11 May 2001, para. 6.3; and No. 347/2008, *N. B-M. v. Switzerland*, decision adopted on 14 November 2011, para. 9.9.